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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 385

THE CITY OF ST. LOUIS, a Municipal Corporation, ANNE M. EVANS, HENRY ERNST and SARAH ERNST,

Petitioners,

AGAINST

CHARLOTTE CLARK LINDSAY,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of Missouri and Brief in Support Thereof.

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City Counselor,

FRANCIS SULLIVAN,
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City of St. Louis.

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Attorney for Petitioners
Evans and Ernsts.

JEFFREY PRESS, INC.

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IN THE

Supreme Court of the United States

NO. , OCTOBER TERM, 1940

THE CITY OF ST. LOUIS, a Municipal Corporation, ANNE M. EVANS, HENRY ERNST and SARAH ERNST,

Petitioners,

against

CHARLOTTE CLARK LINDSAY,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully ask that leave be granted to file this petition, and respectfully show:

Statement of Matter Involved.

On Sept. 21, 1925, a judgment in rem was duly rendered to enforce the collection of a city benefit assessment. On August 2, 1935, the City of St. Louis applied for execution. It was duly issued. On Sept. 14, 1935, the property was sold by the sheriff to petitioner Evans. The sheriff's deed was delivered to her Sept. 30, 1935. The price paid covered taxes, interest and costs. On March 7, 1936, the property was conveyed by warranty deed to petitioners Henry and Sarah Ernst, who placed two deeds of trust on it.

A petition filed in equity Feb. 16, 1937, was sustained. The Circuit Court ruled, "Said property was sold *without due process of law* * * *" "that neither plaintiff nor her husband had any actual notice * * *", and "was not notified of the pendency of said suit except by advertisement as one of a class of property owners in said district * * *"; that the purchaser "paid an unconscionable low price at said sale * * *"; that "said sale is void" and the sheriff's deed "hereby is canceled" and the deeds of trust "are canceled"; that defendant "Evans" is indebted "to plaintiff for the rental value of said property * * * or a total of $500.00" less credits due her "of $85.00 * * * for sheriff's deed—$112.60 paid by her as general taxes * * *" and further, "The Court assesses the costs in this case in favor of plaintiff and against defendant Evans."

The Missouri Supreme Court issued a contradictory mandate Feb. 21, 1940, as follows (R., p. 54, l. 13):

> "that the judgment * * * be in all things affirmed and stand in full force and effect",

and remanded it

> "with directions to modify * * * upon the issue of inadequacy of price and the actions of defendants"

thus omitting the constitutional question of "due notice" sustained by the Circuit Court, and upon which the entire judgment of the Circuit Court rests. The Circuit Court declared the sheriff's sale *void* (R., p. 5) for lack of "due notice" and cancelled the sheriff's deed, hence the purchaser never had any title upon which to base the collection of rents, so a judgment for $500.00 in rents was rendered. Changing the issue to that of fraud, then the sheriff's deed would have conveyed title until *set aside* by the Court, and the rule governing the right to rents would require that the rents follow the title.

Statement Disclosing Basis of Jurisdiction of the Supreme Court of the United States.

The judgment herein sought to be reviewed is a final judgment of the highest court of the State of Missouri. The opinion filed herewith holds as "moot" (R., p. 48, l. 5) the constitutional question of "due process" under Sec. 30, Article II of the Constitution of the State of Missouri, and under Section 1 of the Fourteenth Amendment of the Constitution of the United States, raised in plaintiff's petition (R., p. 10, l. 39, and p. 12, l. 29), sustained by the Circuit Court (p. 4, l. 36), objected to in your petitioner's assignment of errors (p. 21, l. 28); referred to in the Opinion of the Missouri Supreme Court in these words, "Respondent did not have actual knowledge of the proceedings * * * or of the sale" (R., p. 49, l. 8) and the issue is "Moot" (p. 48, l. 5); objected to in the Motion to Modify (R., p. 55, l. 1) and in the Motion to Transfer to Court En Banc (R., p. 59, l. 10) and in the Motion for Rehearing (R., p. 57, l. 42); and contested herein by this application for a Writ of Certiorari.

The Opinion of the Supreme Court granted the full relief prayed for in the petition and granted by the Circuit Court on the following non-federal grounds (p. 54, l. 18):

1. "Inadequacy of price", and
2. "Actions of defendants."

As the price paid, complied with the judgment in rem (p. 40, l. 10), being sufficient to pay the tax, interest and costs and charges (p. 44, l. 30) it is doubtful if there was "inadequacy of price".

As the "actions of defendants" complained of in the Supreme Court Opinion were alleged in the plaintiff's petition (p. 11, l. 14) to have been "after defendant * * * received said sheriff's deed * * *", these "actions" could have had nothing whatsoever to do with procuring the judgment or with the conduct of the sale enforcing the

judgment. Hence these "actions" could not have been fraudulent as to plaintiff's rights.

In accordance with Sec. 6230-35 R. S. Mo. 1929, plaintiff tendered the amount paid at the sale (p. 5, l. 38). In the finding of fact as shown by the Supreme Court decision, none of the requirements pre-requisite for setting aside a tax deed were existing. There was a general tax (for three years delinquent tax) paid; but it was paid after the sale (R., p. 3, l. 9) and the Supreme Court Opinion says, "The City has its judgment, interest and Costs" (R., p. 48, l. 2).

There was therefore no adequate non-federal ground apparent for the decision. Failure on the part of the Supreme Court of Missouri to find that plaintiffs had "due notice" of the judgment and sale as required by the State and Federal Constitutions, and that therefore the sheriff's deed conveyed title to the purchaser, deprived your petitioners of their right to property and protection guaranteed by the Constitution.

Was This an Untenable Attempt of the Supreme Court of the State of Missouri to Evade the Decision of the Federal Question?

If So, Were the Notices by Publication in the Condemnation Suit and Execution Sale Due Process as Required by the State and Federal Constitutions so as to Vest Title to the Property in the Purchaser at the Execution Sale.

The CITY OF ST. LOUIS raised an objection to the statement, "Respondent did not have actual knowledge" in their Motion to Modify, on the ground of its apparent conflict with state and federal laws permitting notice by publication.

Will This Statement Lead One to Believe That the Procedure in Condemnation Under the City Charter and the State Statutes Authorizing Notice by Publication Is Not in Accord With Sec. 1, Art. 14 of the Constitution of the United States?

Miss B. Hanger was the trustee of the deeds of trust which the judgment held "void" (p. 5, l. 20). She had filed a special appearance (R., p. 45, l. 32) in the circuit court objecting to the jurisdiction on the ground of departure. Although evidence showed that she had not been heard the judgment recited "B. Hangar, though having answered, appeared not" (p. 1, l. 18). This finding was sustained by the Supreme Court in their affirmance of the lower court in ALL THINGS WITH FULL FORCE AND EFFECT.

Does the Evidence Show That the Trustee of These Deeds Answered, and the Circuit and the Supreme Court Had Jurisdiction as to Her?

The jurisdiction of the Supreme Court of the United States is sustained by section 344 (b), Title 28, United States Code (Judicial Code, Section 237, as amended). Your petitioners claim here, and by their applications to transfer to court en banc, to modify the decree, and to grant a rehearing in the Missouri Supreme Court, a right under the due process clause of the Fourteenth Amendment, Sec. 1, of the Constitution of the United States. These motions were overruled May 4, 1940. An Order granting extension of time for filing this petition to thirty days from August 1, 1940, was issued by Mr. Justice Black. It is believed that the jurisdiction of this Court is sustained by *Lawrence* v. *State Tax Com. of Miss.*, 286 U. S. 276:

> "Federal rights are denied as well by a refusal of the state court to decide the question presented as by an erroneous decision."

Reasons Relied on for the Allowance of the Writ of Certiorari.

1.

The Missouri Supreme Court has nullified the judgment and proceedings of another Court of last resort in the condemnation suit, *"The City of St. Louis* v. *Mary Rupp, et al.,"* No. 60,071, in Division V of the St. Louis Circuit Court, which issued the judgment in rem, by setting aside the sheriff's deed enforcing it, ten years after the judgment, which deed as a matter of fact was found to have paid the tax assessment, in violation of your petitioner's rights under the fourteenth amendment.

The notice enforcing the judgment in rem in cause #60071 (R., p. 44, l. 28) said:

> "sell at public auction to the highest bidder for cash * * * to satisfy said judgment, interest and charges."

The Opinion of the Circuit Court states (R., p. 4, l. 35):

> "The Court doth further * * * decree that plaintiff's said property was sold without due process of law by the Sheriff of said City * * * under special execution * * * to satisfy said Lien judgment of defendant City * * *, interest and costs, in * * * #60071, Division V * * * and that said sale was and is void * * * and that said sale and the deed of Thomas Madden, Sheriff of the City of St. Louis to Anne M. Evans * * * constitutes a cloud on plaintiff's title * * * and hereby is cancelled * * *"

This opinion of the Circuit Court was sustained by the Missouri Supreme Court, Feb. 21, 1940, in the Mandate

> "adjudge that the judgment aforesaid * * * be in all things affirmed and stand in full force and effect."

The sheriff was required to comply with the judgment (R., p. 40, l. 8), "directing him to proceed to sell * * *

said property * * * to satisfy said special judgments. * * *" He had no discretion in the matter. Your petitioner Evans bought "at public sale" for a price which complied with the judgment. This could not constitute a fraud. Nor could subsequent acts constitute a fraud. Further the evidence showed it to be the average price paid. The Missouri Supreme Court found (R., p. 52, l. 32):

> "This, the average price, does not establish any relation between the price and the worth of any given property. A material factor * * * the worth of the property * * * on the issue of inadequacy of price is lacking."

And on page 51, line 25, of the Record:

> "There is no such affinity between the amount of the tax judgment, interest and costs and the worth of the property subject thereto upon execution as to necessarily constitute the one a criterion for the other."

There was nothing in the Judgment ordering the sale of the property which took into consideration the *worth* of the property. Would the following statement correctly express the law under these circumstances? A COURT OF LAST RESORT HAS NO JURISDICTION TO NULLIFY THE JUDGMENT OF ANOTHER COURT OF EQUAL STANDING, BY SETTING ASIDE THE SHERIFF'S SALE AND DEED ENFORCING THE JUDGMENT OF THE OTHER COURT ON THE GROUND OF INADEQUACY OF CONSIDERATION. TO DO SO, IS A DENIAL OF EQUAL PROTECTION OF THE LAW.

2.

The Court has assumed an equitable jurisdiction it did not have, under the finding of facts as set out in the Opinion of the Supreme Court, to set your petitioners' deeds aside for the reasons directed in the Mandate (1)

inadequacy of price and (2) the actions of defendants Evans and Ernsts, when the Opinion found the price paid covered the tax judgment, interest and costs; and the actions of Evans and Ernsts took place *after* the filing of the tax deed.

Plaintiff's petition (p. 10, l. 36) says:

> "That plaintiff had no *actual knowledge* of said sale and the said sale was conducted without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and Section 30 of Article II of the constitution of the State of Missouri, and * * *"

The Supreme Court Opinion found (p. 49, l. 8):

> "While appellants contend there was due service of process so as to subject the lot to the special assessment judgment, the record establishes that respondent did not have *actual knowledge* of the proceedings for the improvement of Clayton Ave. or of the execution sale prior to her notification by the Burian Realty Company."

The City of St. Louis filed its motion to modify the Opinion on the ground that (p. 55, l. 11)

> "Said opinion may be misconstrued as holding that regardless of the method of notice as required by Article XXI of the Charter with reference to condemnation proceedings, and the statutory notice with respect to execution sales, that parties in the benefit district in condemnation are required to have *actual* knowledge of said proceedings, in addition to the prescribed notice * * * notice amounting to due process of law, the latest case being Schwab v. City of St. Louis, 310 Mo., l. c. 136."

The Supreme Court overruled the Motion to Modify (p. 60, l. 1). It did not find that said sale nor said judg-

ment was unconstitutional, as it might have had the jurisdiction so to find had there been any facts to warrant it; but it erred in setting aside the judgment of another court of last resort in effect, by nullifying the sale regularly held enforcing it. If the notice of the judgment and sale were constitutional, title vested in Evans upon the delivery of the sheriff's deed to her, and title vested in Ernst upon the delivery of warranty deed to him.

There were no allegations in the Respondent's Petition charging any actions fraudulent as to her rights previous to Oct. 5, 1935, the date your petitioner recorded the sheriff's deed (p. 48, l. 35). Hence there could be no equitable jurisdiction to set the sheriff's deed and the warranty deed aside, because of the subsequent actions, namely the sale of the property by Evans to the Ernsts. Would the following statement express the law? TO GIVE EQUITABLE JURISDICTION TO SET ASIDE RECORDED TAX DEED, ALLEGED FRAUD MUST HAVE BEEN COMMITTED PREVIOUS TO THE DATE OF RECORDED TAX DEED, TO MEET REQUIREMENTS OF SEC. I OF THE 14TH AMENDMENT OF THE U. S. CONSTITUTION.

3.

The Missouri Supreme Court has decided an important question of local law, in a way probably in conflict with applicable local decisions, Rule 38, U. S. Supreme Court, in that it has affirmed a ruling of the Circuit Court, which is not only an abuse of discretion but contrary to the statutes of the state so made and provided, being sections 6230-31-32-33-34-35 of the R. S. Mo. 1929.

To defeat a tax deed Respondent was required to prove: (1) "Taxes, interest and costs be paid *before the sale.*" The Supreme Court found (R., p. 50, l. 42) "Miss Evans' bid of $85.00 * covered the judgment, interest and costs"

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*Page 50, line 40 of the Opinion gives $8.50 as the price paid by petitioner. This is a stenographic error. Page 10, line 24 of the Petition gives $85.00, as does page 50, line 42 of the Opinion.

and (R., p. 48, l. 36) "six days *subsequent* to said sale, Mrs. Lindsay paid delinquent taxes" (general taxes). (2) "That the real property was not subject to taxation." The Supreme Court found (R., p. 48, l. 11), "Commissioners appointed to ascertain * * * special benefits * * *, assessing a special benefit * * * against said lot; * * * final judgment was entered approving said report * * *" (3) "* * * had been redeemed from sale the date of the deed." There is no provision for redemption under the Charter of the City of St. Louis unless the City purchases. (4) "Tender of redemption money had been made." Respondent offers to pay the redemption money, calling it "doing equity". The Opinion reads (R., p. 48, l. 1), "Since the respondent must do equity * * *." The $85.00 is to be deducted from rents collected after the sale (R., p. 4, l. 38). Would the following statement express the law? TO DEFEAT A TAX DEED, OWNER MUST HAVE TECHNICALLY COMPLIED WITH THE TAX LAWS, TO SATISFY CONSTITUTIONAL REQUIREMENTS UNDER THE FOURTEENTH AMENDMENT.

4.

It has so far sanctioned the departure of the lower Court from the accustomed usual course of judicial procedure, as to call for the exercise of the supervision of the United States Supreme Court.

It has damaged your petitioners' reputation for high standards of character and action by adjudging them guilty of fraud, upon a finding of fact which shows that your petitioner, relying upon the good faith of the Courts, was the highest bidder and purchased a sheriff's deed issued in due course, and having acquired the property undertook to sell it, as she saw fit. A CITIZEN IS NOT FRAUDULENT NOR SUBJECT TO PENAL BOND (R., p. 7, l. 12) FOR BEING HIGHEST BIDDER AT TAX SALE.

5.

The Decision Is Against Public Policy.

Appellants' motion TO TRANSFER TO COURT EN BANC sets out that the (R., p. 59, l. 22):

> "Court's opinion as delivered herein announces principles of law which, in effect, will destroy the effectiveness and validity of tax sales of real estate in the City of St. Louis * * *" "It is in conflict with Uhrig v. Hill-Behan Lumber Co., 341 Mo. 851, 110 S. W. (2nd) 412 * * *;" and "is in conflict with Schwab v. City of St. Louis, 310 Mo. 116, 274 S. W. 1058."

The hundreds of sales of property sold in good faith by the City of St. Louis at such tax sales will be doubtful. The hundreds of sales where the City has been required to bid and buy, will be doubtful. Thousands of land titles based on such consideration as paid in this case will rest in the bosoms of unknown future Chancellors. The open market on real estate so far as execution sale will be closed. Title companies will be bound to investigate other matters than the face of the record, making it impossible to obtain a valid title report; a title company could well be held responsible for giving a title which could be set aside by a Court in Equity long after the certificate of title was given. As Judge Greaves said in the *Mangold* case, 237 Mo. 459, titles should not depend on the "sliding state of judicial shock".

The mandate of the Missouri Supreme Court is contradictory on its face. The judgment of the lower Court cannot be "in all things affirmed and stand in full force and effect" and at the same time give "directions to modify". The mandate of the Supreme Court is contradictory in its application. It cannot affirm the lower Court in finding the sheriff's deed *"void"*, and at the same time direct a modification, which would indicate that the deeds were being *set aside* for fraud. Could the law be stated thus?

CONTRADICTORY COURT JUDGMENTS ARE VOID PER SE. PUBLIC POLICY REQUIRES COURT DECISIONS TO BE CLEARLY UNDERSTANDABLE; AND TITLE RECORDS DEFINITE AND CERTAIN, IN ORDER TO PROVIDE EQUAL PROTECTION OF THE LAW.

6.

The lower court found (p. 1, l. 19), "Appearances: * * * Defendant B. Hanger, trustee, though having answered, appeared not."

The evidence of Mr. Kozlicki on page 45 did not sustain this finding of the lower court which was affirmed by the Supreme Court when it sustained the lower court "in all things". The appearances in the Judgment show that A. M. Evans was appearing for Evans and Ernsts. The stenographer used *Mr.* B. Hanger in the first line, and *Miss* Hanger in the 10th line. The testimony of the clerk in the court room showed:

> "There was a motion filed by the attorney for Miss Hanger in this suit on April 7th. It was a special appearance of B. Hanger, trustee, objecting to the Court's jurisdiction. It was never overruled. There are no minutes showing the overruling of said motion and it was never docketed on the law docket and Judge Williams' records show that it was never acted upon and has never been before the Court."

Miss Hanger, Trustee, never answered, yet the Court tried the case when it was not at issue and gave this judgment (R., p. 5, l. 20):

> "The deed of trust to secure a pretended loan * * * to said defendant B. Hanger, trustee, for the benefit of said defendant J. E. Hanger, recorded * * * are *void* and constitute clouds on the title of plaintiff * * *"

The Court erred in so doing, when B. Hanger was not

duly before the Court. Would the following properly state the law? TO SET ASIDE DEEDS OF TRUST WHEN THE TRUSTEE IS NOT DULY BEFORE THE COURT, IS A VIOLATION OF DUE PROCESS OF LAW.

7.

Had the Supreme Court found that the judgment in the condemnation suit #60071 was ABSOLUTELY VOID, all subsequent deeds must fail, no matter what price was paid at the sale, or who were made parties defendant; but the Missouri Supreme Court cites respondent's brief (R., p. 48, l. 2): "The City has its judgment, interest and costs." The title therefore had vested, and Respondent would not be "doing equity" by paying the price which the tax deed brought at the execution sale, but would be complying with the statute, Secs. 6230-35, R. S. Mo. 1940. Respondent had not complied with the other parts of these sections. Would not a ruling requiring the holder of the tax deed to accept this tender, be a violation of the constitutional rights of the purchaser at the tax sale, and all privies at interest? Would the following be a proper statement of the law?

TO SET ASIDE AN EXECUTION SALE REGULARLY CONDUCTED, AND A DULY EXECUTED AND RECORDED TAX DEED WHICH PAID A VALID TAX, IS A VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE PURCHASER.

Summary.

For the foregoing reasons the following judgment is desired:

THE JUDGMENT OF THE SUPREME COURT OF MISSOURI IN THE CASE OF CHARLOTTE CLARK LINDSAY *V.* THE CITY OF ST. LOUIS, A MUNICIPAL CORPORATION, ANNE M. EVANS, ET AL., #36,280, IS VOID FOR LACK OF JURISDICTION UNDER THE LAW AND UNDER THE

FACTS ALLEGED; REVERSED WITH COSTS AND REMANDED.

And your petitioner prays the Court to interpret the following statements as applicable to the state and federal laws, in all of which the Supreme Court of Missouri was in error:

1. A court of last resort has no jurisdiction to nullify the judgment of another court of equal standing, by setting aside the sheriff's sale and deed enforcing the judgment of the other court on the ground of inadequacy of consideration. To do so is a denial of equal protection of the law.

2. To give equitable jurisdiction to set aside recorded tax deed, alleged fraud must have been committed previous to the date of the recorded tax deed, otherwise constitutional rights are infringed.

3. To defeat a tax deed which is recorded, the former owner must have technically complied with the tax laws, before the tax deed was recorded, to satisfy the constitutional requirements under Sec. 1 of the Fourteenth Amendment of the Constitution of the U. S.

4. A citizen is not fraudulent nor subject to penal bond for being the highest bidder at a tax sale.

5. Contradictory Court judgments are void per se. Public policy requires decisions to be clearly understandable; and title records based thereon, definite and certain, in order to provide equal protection of the law.

6. To set aside deeds of trust when the record shows that the trustee is not duly before the Court, is a violation of due process.

7. To set aside an execution sale regularly conducted, and the duly executed and recorded tax deed, which paid a valid tax assessment, is a violation of the constitutional rights of the purchaser under sec. 1 of the Fourteenth Amendment.

Summary of Law.

The Missouri law mainly relied upon by your petitioners as a basis for the United States Supreme Court decision:

Petitioners' rights under Article II, Sec. 30 of the Constitution of the State of Missouri, being the "due process" provision, were violated by the Supreme Court refusing to pass on the constitutional question.

Plaintiff was duly notified in accordance with Sections 5 and 8 of Article XXI of the Charter of the City of St. Louis, and Sec. 1198, R. S. Mo. 1929, so sale was binding on respondent's property. The sheriff's deed paid a valid tax.

"The publication of such notice, when duly had, amounts to due process of law." *Schwab* v. *City of St. Louis,* 310 Mo. l. c. 136.

"If the sale was valid, defendants (your petitioners) own the property * * *." *Uhrig* v. *Hill-Behan,* 341 Mo. 851.

Plaintiff was notified within five days (R., p. 48, l. 35) by recording deed. "Recorded instrument shall impart notice to all persons of the contents." Sec. 3040, R. S. Mo. 1929.

SUITS TO SETTLE TITLE must prove what—"* * * in order to defeat a tax deed, either that the taxes, interest and costs be paid *before* the sale; that the real property * * * was not subject to taxation; * * * had been redeemed from sale the date of the deed, * * * or tender of redemption money had been made" and

"If any person claiming title under a tax deed * * * shall be defeated * * * in any suit * * * for the recovery of the real property * * * conveyed by such tax deed, the successful claimant shall be

adjudged to pay such person * * * the full amount * * * paid * * * at the tax sale * * * and ten per cent * * * as penalty * * * and all costs in the case * * *" Sections 6230-35, R. S. Mo. 1929.

"The judgment is unassailable by a bill in equity except for fraud in the very procurement of the judgment itself." *Shemwell* v. *Betts,* 264 Mo. 268.

The Federal Law mainly relied upon by your petitioners as a basis for the United States Supreme Court decision:

Petitioners' rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States, being the due process of law provision, violated by refusal of Supreme Court to pass on constitutional question.

Jurisdiction of U. S. Supreme Court authorized by Sec. 344 (b), Title 28, U. S. Code (Judicial Code, Sec. 237, as amended), and

Rule 38, Revised Rules of Supreme Court Effective Feb. 27, 1939.

Lawrence v. *State Tax Com. of Miss.,* 286 U. S. 276: "Federal rights are denied as well by a refusal of the State Court to decide the question presented as by an erroneous decision."

Prayer.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Missouri, commanding that court to certify and to send to this court for its review and determination on a day certain to be therein named, a transcript of the record and proceedings therein, and that the judgment and decree of the Supreme Court of Missouri be reversed with costs and remanded by this Honorable Court and your petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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